In the Supreme Court of the United States

OCTOBER TERM, 1928

No. 164

COUNTY OF SPOKANE AND COUNTY OF WHITMAN, Washington, petitioners

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The Superior Court of Spokane County, Washington, filed no opinion. Its findings of fact and conclusions of law are in the record at pages 13–17. The opinion of the Supreme Court of the State of Washington (R. 64–75) has not yet been reported.

JURISDICTION

The judgment of the Supreme Court of the State of Washington (R. 77) was entered April 20, 1928. Petition for writ of certiorari was filed May 31,

1928. Jurisdiction is conferred upon this Court by Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The sole question presented is whether the priority accorded the United States in Section 3466, Revised Statutes, gives the Federal Government a preference in the payment of its tax claims over those of a State.

CONSTITUTION AND STATUTES INVOLVED

The pertinent provisions of the Constitution of the United States are as follows:

ARTICLE I

> Sec. 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, * * *;
>
> * * * * *
>
> To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

ARTICLE VI

> * * * * *
>
> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law

> of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Revised Statutes, Section 3186, as amended, c. 344, 43 Stat. 994 (U. S. C., Title 26, Sec. 115), provides:

> That if any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto upon all property and rights to property belonging to such person: *Provided, however,* That such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the collector in the office of the clerk of the district court of the district within which the property subject to such lien is situated. * * *

Revised Statutes, Section 3466 (U. S. C., Title 31, Sec. 191), reads:

> Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority here-

> by established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

Revised Statutes, Section 3467 (U. S. C., Title 31, Sec. 192), is as follows:

> Every executor, administrator, or assignee, or other person, who pays any debt due by the person or estate from whom or for which he acts, before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

STATEMENT

On August 28, 1922, a receiver for the Culton-Moylan-Reilly Auto Company, an insolvent corporation, was appointed by the Superior Court of Spokane County, Washington. On March 1, 1921, and March 1, 1922, Spokane County and Whitman County, municipal corporations of the State of Washington, assessed and levied personal-property taxes against the Culton-Moylan-Reilly Auto Company in the total amounts of $6,195.38 and $410.36, respectively. (R. 14.) Thereafter, under order of

the court, the receiver sold the personal property of the insolvent corporation and reduced the same to cash, which he held. Subsequently, on September 23, 1924, Spokane County assessed the money in the hands of the receiver for the years 1923 and 1924 and levied taxes thereupon in the total amount of $1,390.10. On December 20, 1926, Spokane County made a further assessment and levy on the monies in the hands of the receiver for the years 1925 and 1926 in the total amount of $1,219.52. (R. 15.) On February 28, 1923, and May 2, 1923, additional income taxes and penalties for the years 1917, 1918, 1919, and 1920 were assessed by the United States in the total amount of $70,268.58. (R. 15–16.) The funds in the hands of the receiver are insufficient to pay in full the claims of the United States, Spokane County, and Whitman County. (R. 16.)

On August 11, 1926, Spokane County filed a petition for an order requiring the receiver to pay the county $6,936.09, with interest, to satisfy its tax claims. (R. 1.) Thereupon the receiver was ordered to show cause why he should not satisfy the tax claims of Spokane County. (R. 2.) On August 16, 1926, the United States filed an amended statement of the tax liability of the insolvent corporation and claimed priority in payment by reason of Section 3466, Revised Statutes, and Section 64 (a) of the Bankruptcy Act. (R. 2–3.) On August 24, 1926, the receiver filed his answer, reciting the

tax claims of the United States and Spokane County and praying that the question of priority be determined. (R. 4–6.) On September 14, 1926, the receiver advised the court of the tax claim of Whitman County and petitioned that an order be issued directing that county to present its claim and establish its priority. (R. 8.) Thereafter, the order was issued (R. 9), and on December 15, 1926, the amended answer of Whitman County was filed (R. 10–11). On December 21, 1926, Spokane County filed an amended petition increasing the amount of its claim. (R. 11–13.)

As conclusions of law the Superior Court of Spokane County found taxes due Spokane County in the total amount of $8,805, with interest; taxes due Whitman County in the total amount of $410.36, with interest, and taxes and penalties due the United States in the total amount of $70,268.58. It was further found that Spokane County and Whitman County were entitled to priority over the United States, not only as to the county taxes levied against the corporation but for the county taxes for 1923–1926 assessed on the money in the receiver's hands. (R. 16–17.) On appeal to the Supreme Court of Washington the judgment was reversed and priority awarded to the United States. (R. 77.) Petitioners now seek a writ of certiorari to review the judgment of the Supreme Court of the State of Washington.

ARGUMENT

PRIORITY SECURED TO THE UNITED STATES BY SECTION 3466 OF THE REVISED STATUTES IS PRIORITY OVER ALL OTHER CREDITORS, INCLUDING A STATE AND ITS SUBDIVISIONS

The Congress of the United States has undoubted power to give claims of the United States priority over those of a State and its subdivisions, as well as over private claims. Section 3466, R. S., gives the United States priority over public claims as well as private claims, and this Court has so stated. The section has also been held to prefer tax claims.

In this case the liability for Federal income taxes for the years 1917 to 1920, inclusive, arose prior to the levy of County taxes, and the law providing for priority of Federal taxes was in effect before the County taxes were levied, although these facts may be unimportant. We are not dealing with a demand of the United States for priority of a general claim over prior specific liens. As the concurring opinion (R. 73) points out, Counties had no real specific lien.

The fact that Congress has provided that a lien for Federal taxes shall be inferior to the liens of mortgagees, purchasers, and judgment creditors, whose rights attach prior to notice of the filing of a lien of the United States, does not show that Congress had intended to give State taxes priority. A mortgagee or purchaser may pay out money in

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Constitution and statutes involved	2
Statement	4
Argument:	
The priority secured to the United States by section 3466, Revised Statutes, is priority over all other creditors, including a State and its subdivisions	7
Conclusion	12

CITATIONS

Cases:	
Bramwell v. *U. S. Fidelity Co.*, 269 U. S. 483	9
Ferris v. *Chiclet Mint Gum Co.*, 14 Del. Ch. Rep. 232	11
Field v. *United States*, 9 Pet. 182	8
Flint v. *Stone Tracy Co.*, 220 U. S. 107	12
Frick v. *Pennsylvania*, 268 U. S. 473	10
In re A. E. Fountain, Inc., 295 Fed. 873	10
Lane County v. *Oregon*, 7 Wall. 71	8
Stover v. *Scotch Hills Coal Co.*, 4 F. (2d) 748	10
United States v. *Fisher*, 2 Cranch 358	9
United States v. *National Surety Co.*, 254 U. S. 73	10
United States v. *San Juan County*, 280 Fed. 120	10
United States v. *Snyder*, 149 U. S. 210	8
Statutes:	
Rev. Stat., sec. 3186, as amended, c. 344, 43 Stat. 904 (U. S. C., Title 26, sec. 115)	3
Rev. Stat., sec. 3466 (U. S. C., Title 31, sec. 191)	3
Rev. Stat., sec. 3467 (U. S. C., Title 31, sec. 192)	4
Constitution:	
Art. I, sec. 8	2
Art. VI	2

ignorance of a claim for Federal taxes, and a judgment creditor may purchase the land at execution sale, or take other action in like ignorance. There were reasons of policy for saving the rights of those who part with something in ignorance of the Federal Claim. No such reason exists in the case of State taxes. The State parts with nothing when it levies a tax. The theory of the petitioners, expressed in the dissenting opinion of the Supreme Court (R. 74), is that in collecting its own taxes the Federal Government may not interfere with the collection of State taxes, a theory which results in supremacy of the State law.

This Court has made it clear that no power of interference with Federal taxation exists in the States:

> The grant of the power and its limitation are wholly inconsistent with the proposition that the States can by legislation interfere with the assessment of Federal taxes. *United States* v. *Snyder*, 149 U. S. 210, 214.

The priority of the United States in the instant case attaches by virtue of valid legislation, and at an early date it was held by this Court that the States "could not create a priority in favor of other creditors, in cases of insolvency, which should supersede that of the United States." *Field* v. *United States*, 9 Pet. 182, 201.

In *Lane County* v. *Oregon*, 7 Wall. 71, 77, it was said:

In the case of a tax on the same subject by both governments, the claim of the United States, as the supreme authority, must be preferred.

Petitioners contend that if priority were accorded to the United States as against the tax claims of the States a condition would arise "where the county government could not function. Its officers could not get their pay." (Br. 7.)

In *United States* v. *Fisher*, 2 Cranch, 358, 396, Chief Justice Marshall said:

> This claim of priority on the part of the United States will, it has been said, interfere with the right of the state sovereignties respecting the dignity of debts, and will defeat the measures they have a right to adopt to secure themselves against delinquencies on the part of their own revenue officers. But this is an objection to the constitution itself. The mischief suggested, so far as it can really happen, is the necessary consequence of the supremacy of the laws of the United States on all subjects to which the legislative power of congress extends.

Dealing specifically with Section 3466, Revised Statutes, this Court has said: "The established rule of liberal construction requires that the priority act be applied, having regard to the public good it was intended to advance. Its application is not to be narrowly restricted to the cases within the literal and technical meaning of the words used." *Bramwell* v. *U. S. Fidelity Co.*, 269 U. S. 483, 492.

In *United States* v. *National Surety Co.*, 254 U. S. 73, 76, the Court said:

> The priority secured to the United States by Section 3466 is priority over all other creditors; that is, private persons and other public bodies.

In *Frick* v. *Pennsylvania*, 268 U. S. 473, the estate under consideration was ample to satisfy both state and federal taxes and the question of priority was not involved. While that situation was reflected in the opinion, this Court referred to the priority of the United States in the following language (p. 500):

> The two taxes were concurrently imposed and stand on the same plane, save as the United States possibly might have a preferred right of enforcement if the estate were insufficient to pay both.

The question of priority between the United States and the subdivision of a state arose in *United States* v. *San Juan County*, 280 Fed. 120. Consistent with the principle established by the authorities heretofore cited, the District Court for the Western District of Washington held that the United States was entitled to priority.

The question was later presented to the District Court for the Western District of Pennsylvania, where the same conclusion was reached. *Stover et al.* v. *Scotch Hills Coal Co.*, 4 F. (2d) 748.

In *In re A. E. Fountain, Inc.*, 295 Fed. 873, the opinion of the District Court for the Southern Dis-

trict of New York, contains a *dictum* expressing disagreement with the case of *United States* v. *San Juan County, supra,* although that court held (p. 875) that Section 3466, Revised Statutes, was not there involved. Furthermore, by reason of an agreement between the two sovereignties to share the fund *pro rata,* the court did not attempt to decide the question of priority.

Petitioners rely upon *Ferris* v. *Chic-Mint Gum Co.,* 14 Del. Ch. Rep. 232, as holding that the claim of the state should be accorded priority over that of the United States. That case does not support petitioners' contention here. At page 240 of the opinion it is said: "it has not been necessary to examine the general question of the relative rights of Federal and State governments in asserting their respective claims for taxes." The unusual situation there presented is shown by the following language from the opinion (p. 239):

> Here we have three claimants, each claiming certain preferences. The first (the State, County, and City) admittedly outranks the second (the mortgagee), and we have seen that the second outranks the third (the United States). Yet it is contended that the third is to be preferred to the first and thus displace the second from a position of preference over the third. If this contention be accepted, then, indeed, will the last be declared to be first. When the government agreed by Section 3186 to take rank after the mortgagee, it must necessarily follow that it

is subordinate in rank to those who are superior to its immediate senior.

Priority was accorded the State in that case solely by reason of the fact that it was entitled to a preference over a third creditor, as to which the United States had specifically subordinated itself. Accordingly, the case is not in point. Furthermore, its reasoning is fallacious. The Court should have set apart sufficient to pay the mortgage before paying the Federal tax and then provided for payment of the State tax out of the sum so set apart. That would have given the mortgage priority over the Federal tax and have given the State tax priority over the mortgage.

> Enactments levying taxes, as other laws of the Federal Government when acting within constitutional authority, are the supreme law of the land. (*Flint* v. *Stone Tracy Co.*, 220 U. S. 107, 153.)

CONCLUSION

No conflict of decisions is presented and no sufficient reason is suggested why this case should be reviewed. Accordingly it is respectfully submitted that the petition should be denied.

WILLIAM D. MITCHELL,
Solicitor General.
MABEL WALKER WILLEBRANDT,
Assistant Attorney General.
J. LOUIS MONARCH,
Attorney.

JULY, 1928.

○